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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	No. CR-07-00370-CW
)	
Plaintiff,)	DEFENDANT’S SENTENCING
)	MEMORANDUM
vs.)	
)	Hearing Date: December 5, 2007
JOSE LOPEZ-PADILLA,)	
)	
Defendant.)	

Defendant Jose Lopez-Padilla committed an illegal reentry into this country and he accepted a fast-track plea agreement offered by the United States. He also retained the right to seek a lower offense level (9) based on the argument that his prior felony conviction for cultivating “or,” *inter alia*, “drying” a single marijuana plant under Cal. Health and Safety Code § 11358 without any allegation that it was for distribution should not constitute a “drug trafficking offense” under the guidelines. Rejecting that argument, the Probation Officer has calculated an offense level¹³ and a Criminal History Category V, with a resultant range of 24-30 months prison. Without objecting to the calculations of the Probation Officer, the Government and the defendant agree that the sentence should be 18 months prison, based on the factors set forth in 18 U.S.C. § 3553(a).

1 The defense joins the government in urging a sentence of 18 months prison based on the
2 overstatement of criminal history inherent in the imposition of a 12-level adjustment for drug
3 trafficking based on an aged conviction for growing a single marijuana plant. Mr. Lopez-Padilla
4 does not have a serious criminal history. He is anxious to return to Mexico to be reunited with
5 his family and he has no intentions of returning to this country.

6 A sentence of 18 months prison is thus respectfully requested.

7 Dated: 11/30/07

Respectfully submitted,

8 BARRY J. PORTMAN
9 Federal Public Defender
10 Northern District of California

11 /s/

12 JOHN PAUL REICHMUTH
13 Assistant Federal Public Defender
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